

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1145 of 1998

in

SPECIAL CIVIL APPLICATION No 7189 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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SHABANABANU MOHAMMED QAYYUMKHANPATHAN

Versus

STATE OF GUJARAT

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Appearance:

Mr. Harubhai Mehta for MRS VASAVDATTA BHATT for Appellant  
Mr.P.G.Desai, G.P.p. for Respondent No. 1  
MR AD OZA for Respondent No. 2 to 4

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE C.K.BUCH

Date of decision: 19/08/1999

ORAL JUDGEMENT (Per: Thakker.J)

Admitted.

#. Mr.P.G.Desai, learned Government Pleader appears and waives service of notice of admission on behalf of respondent no.1. Mr. A.D.Oza learned advocate appears

and waives service of notice of admission on behalf of respondents nos 2 to 4.

#. In the facts and circumstances of the case, the matter is taken up for final hearing today with the consent of all the parties.

#. This appeal is filed against the summary dismissal of Special Civil Application No. 7189 of 1998 by the learned Single Judge on September 14, 1998. On that day the learned Single Judge passed the following order:

" In view of the order passed in SCA Nos. 5218/98, 8610/97 and 8193/97 dated 13.8.98 by this Court (Coram: N.N.. Mathur.J), the petitioner is relegated to the Committee to implement Vidya Sahayak Scheme. In view of this the petition is disposed of accordingly without entering into the merits of the case."

(emphasis supplied)

In view of the above order dated September 14, 1998 the petitioner was relegated to the Committee constituted for implementing Vidya Sahayak Scheme. The petition was disposed of accordingly without entering into the merits of the case.

#. Being aggrieved by the above order the appellant has filed this appeal. The case of the appellant was that she had passed SSC examination and had also obtained a Diploma in Art . According to the appellant, the Government of Gujarat had introduced a scheme for appointment of Vidya Sahayak vide Government Resolution dated June 11, 1998-Annexure-D to the petition. Consequently, a circular was issued by the District Education Officer on June 15, 1998-Annexure E to the petition. It was the case of the appellant that she had made an application to get appointment as Vidya Sahayak in Ahmedabad in Urdu School. According to her, appointments were to be made as per the policy of the Government of Gujarat and she was qualified and eligible for such appointment.

#. The learned Single Judge, however, in the light of the orders passed in other petitions relegated the petitioner to the Committee which was to implement Vidya Sahayak Scheme. In view of the order passed by the learned single Judge, the appellant approached the Committee without prejudice to her rights and

contentions. But her application was rejected. She, therefore, challenged the order passed by the learned Single Judge.

#. Several contentions were raised by Mr. H.M.Mehta learned Senior advocate appearing for Ms.Vasavadatta Bhatt for the appellant-petitioner. He submitted that in the facts and circumstances, the order passed by the learned Single Judge was illegal and contrary to law and that the case of the appellant was required to be considered in accordance with law.

#. Mr. Desai learned Government Pleader contested the petition. Relying upon the affidavit of Mr.A.A.Nagori, Joint Secretary, Education Department and Chairman of Vidya Sahayak Samiti, he supported the order passed by the Committee. Mr. Oza learned advocate appearing on behalf of the respondents nos 2 to 4 also supported the order passed by the Committee and also by the learned Single Judge. He raised a preliminary objection that the learned Single Judge has not decided the petition on merits. He merely relegated the appellant to approach Vidya Sahayak Samiti; and disposed of the matter without observing anything on merits. If this court is of the opinion that the learned Single Judge ought not to have dismissed the petition, at the most, the order passed by the learned Single Judge may be set aside and direction may be issued so that the learned Single Judge may enter into merits of the matter and may pass appropriate order on merits after hearing the parties in accordance with law.

#. From the order passed by the learned Single Judge extracted hereinabove, it is clear that the petition was disposed by the learned Judge "without entering to the merits of the case." After the order passed by the learned Single Judge, the appellant had approached the Committee but the Committee had rejected the prayer made by the appellant petitioner. In view of the fact that the matter was not decided and several questions of law and facts are raised before us, it would be in the fitness of things and in the interest of justice, if we allow this appeal by setting aside the order passed by the learned Single Judge so that the matter can again be placed before the learned Single Judge taking up such matters for passing appropriate orders in accordance with law.

#. For the foregoing reasons the Letters Patent Appeal deserves to be allowed and is accordingly allowed. The

order passed in Special Civil Application No.7189 of 1998 is hereby quashed and set aside. The office will place this matter before the Court taking up such matters so that the learned Single Judge may decide the same in accordance with law. We may observe that we are not expressing any opinion regarding the merits of this case and as and when the matter will be placed before the learned Single Judge, the learned Single Judge will decide the same in accordance with law, without being influenced by any observation made by us hereinabove.

##. The office will treat this Special Civil Application No. 7189 of 1998 as admitted and will place the same for final hearing.

##. Appeal is accordingly partly allowed. In the facts and circumstances, however, there shall be no order as to costs.